Supreme Court, U.S.
FILED
MAY 5 1986
JOSEPH F. SPANIOL, JR.
CLERK

(5)

No. 85-530

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

DENNIS M. O'CONNOR, et al.,
Petitioners,

vs.

MAGNO J. ORTEGA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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DOCKET ENTRIES IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORTEGA v. O'CONNOR, et al.
C-82-4045JPV

July 30, 1982.....	Complaint, Summons issued. Jury demand.
October 20, 1982	Defendant Asher Rubin notice of motion, hearing set for 11/19/82 at 9:30.
October 20, 1982	Defendants Dennis O'Connor, Richard Friday, Dorothy Owen & Stefan Donoviel ANSWER to complaint and demand for jury trial.
October 28, 1982	Proof of service as to Gilbert Graham and Raul S. Picardo.
November 9, 1982.....	Plaintiff's reply to motion to dismiss by defendant Rubin, hearing set for 11/19/82 at 9:30.
November 22, 1982.....	STIPULATION & ORDER: defendant's motion to dismiss will be taken off calendar and that plaintiff will be granted 30 days from said hearing date to file an amended complaint.
January 19, 1983	Plaintiff's first set of interrogs.
January 27, 1983	Plaintiff's first amended complaint.
February 14, 1983.....	Plaintiff's first request for production of documents.
March 22, 1983.....	Defendant Asher Rubin notice of motion, hearing set for 4/29/83 at 9:30.
March 22, 1983.....	Defendant Dennis O'Connor et al. answer and demand for jury trial.
April 4, 1983.....	Plaintiff's deposition notice of Dennis M. O'Connor on 4/21/83 at 9:00.

April 15, 1983	Plaintiff Magno J. Ortega memo of points and authorities in opposition to motion to dismiss and/or strike. Hearing set for 4/29/83 at 9:30.
April 29, 1983	MINUTES: (c/r R. Linkerman), defendant motion for dismissal GRANTED part, DENIED in part. Case continued to 11/18/83 at 10:00 for pre-trial conference, case continued to 12/5/83 at 10:00 for trial.
May 2, 1983	ORDER: defendant Rubin's motion to dismiss be GRANTED without leave to amend as to the allegations of violations of 42 USC:1981 and 42 USC:1985. It is further ordered that defendant Rubin's motion to dismiss is DENIED.
May 17, 1983	Defendant Asher Rubin answer and demand for jury trial.
June 14, 1983	Plaintiff deposition notice of Richard Friday on 6/28/83 at 1:00. Jim Stratton on 6/28/83 at 3:00, Louis Langoria on 6/28/83 at 4:00.
July 5, 1983	DEPOSITION of: Dennis M. O'Connor, 4/27/83.
August 26, 1983	DEPOSITION OF: Richard Friday, 6/28/83.
November 8, 1983	Clerk's Order Setting Status Conference for 11/22/83 at 10:00 a.m.
November 23, 1983	MINUTES: (C/R none 11-22-83) Status Conference Held, case continued to 4/5/84 at 10:00 a.m. for Pretrial; Jury Trial, 4/23/84 at 10:00 a.m.; Discovery Cut-off 3/15/84 JPV
November 30, 1983	ORDER RE: STATUS CONFERENCE: Plaintiff to file any motions for summary judgment by 2/15/84; discovery cut-off, 3/15/84; Pre-trial conference, 4/5/84; Trial, 4/23/84 JPV

March 14, 1984.....	Defendants O'Connor, Owen et al's Notice of Motion for Summary Judgment, 4/10/84 at 10:00 a.m. —Proof of Service —Motion for Summary Judgment —Declaration of Asher Rubin —Declaration of Jeanette Raap
March 15, 1984.....	Plaintiff's Notice of Hearing re: Motion for Partial Summary Judgment and/or Specification of Facts 4/10/84 at 10:00 a.m.
March 15, 1984.....	Plaintiff's Motion for Summary Judgment or Order Specifying Facts 4/10/84 at 10:00 a.m.
March 15, 1984.....	Plaintiff's Memo of Points and Authorities in Support of Motion for Partial Summary Judgment.
March 15, 1984.....	Plaintiff's Statement of Facts in Support of Motion for Summary Judgment.
March 15, 1984.....	Plaintiff's Declaration of Magno J. Ortega.
March 15, 1984.....	Plaintiff's Declaration of Asha M. Gandhi, M.D.
March 15, 1984.....	Plaintiff's Declaration of Gilbert T. Graham.
March 14, 1984.....	Plaintiff's Deposition Notice of Dorothy Owens, Stefan Donoviel, Asher Rubin, 3/26/84.
March 19, 1984.....	Copy of letter dated 3/14/84 from Nancy Wainwright to Gilbert T. Graham re: Depositions and Possible Continuance of Trial Date.
March 26, 1984.....	Plaintiff's Opposition to Defendant's Motion for Summary Judgment 4/10/84 at 10:00 a.m.
March 26, 1984.....	Plaintiff's Supplemental Declaration of Magno J. Ortega.
March 26, 1984.....	Defendants' Opposition to Plaintiff's Statement of Facts.
March 26, 1984.....	Defendants' Opposition to Plaintiff's Motion for Summary Judgment.

March 27, 1984.....	Reporter's Transcript, 4/29/83.
March 28, 1984.....	Defendants' Errata re: Opposition to Plaintiff's Summary Judgment.
March 28, 1984.....	Defendants' Submission of Original Declarations in Opposition to Plaintiff's Motion for Summary Judgment —Declaration of Richard Friday —Declaration of Dorothy Hesskett —Declaration of Shirley Ciraulo
April 2, 1984.....	MINUTES (C/R Larry White) 3/29/84—Plaintiff's Motion for Summary Judgment DENIED; Defendant's Motion to Dismiss, Stay, DENIED; Defendant's Motion for Summary Judgment GRANTED, Motion to Dismiss Defendant Ruben, GRANTED JPV
May 23, 1984.....	ORDER: Defendants Rubin, O'Connor, Friday, & Owen's Motion for Summary Judgment is GRANTED, Plaintiff's Motion for Summary Judgment is DENIED JPV —Entered in Civil Docket 5/31/84 Clerk
May 30, 1984.....	JUDGMENT: Summary Judgment is Granted in Favor of Defendants & Action is Dismissed —Entered in Civil Docket 5/31/84 Copies to Counsel
June 4, 1984.....	Defendants' Notice of Entry of Judgment.
June 27, 1984.....	Plaintiff's *Notice of Appeal* Fee Paid, Notice to USCA and Counsel #84 2169
July 11, 1984.....	Appellant's Designation of Reporter's Transcript, 3/29/84.
July 25, 1984.....	Reporter's Transcript—3/29/84.
July 26, 1984.....	Mailed Certificate of Record to USCA and counsel.

DOCKET ENTRIES
U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT

ORTEGA V. O'CONNOR, et. al.
CASE NO. 84-2169

June 29, 1984.....	DOCKET NUMBER ASSIGNED
July 2, 1984.....	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSELS.
July 10, 1984.....	Filed appellant's civil appeal docketing statement (7/9) (CONFATT)
July 30, 1984.....	Filed as of July 27, 1984, CERTIFICATE OF RECORD (7/25/84).
September 14, 1984.....	Filed Order (Mot. Atty, RGK) (1) Aplt shall file a brief of not more than 25 pgs on or before Oct. 31, 1984. (2) Aples shall file a brief of not more than 25 pgs on or before Dec. 7, 1984. (3) Apl may file a reply brief of not more than 10 pgs within 14 days of the service date of aples' brief. This order is subject to reconsideration by a judge if an objection is filed within 10 days of the entry of the order. (9/14)
October 31, 1984	Filed Orig & 15 copies of aplt's opening brief (22 pgs.) & 5 copies of the Excerpt of Record. 10/30.
November 19, 1984.....	Filed aplt's application to supplement aplt's opening brief. (11/16) (CIVATT).
November 19, 1984.....	Receivd aplt's supplement to aplt's opening brief. (11/16) (CIVATT).
December 4, 1984	Filed order (Sneed) aplt's motion to supp'l his opening brief is granted. The supplemental received by the clerk on November 19, 1984 shall be filed.

December 4, 1984	Filed aplt supp'l Opening Brief rec'd 11/19/84.
December 7, 1984	Filed aple's application for ext. of time to file. (12/7) (CIVATT).
December 17, 1984	Filed Order (Mot/Atty, SMJ) appellees' motion for ext. of time to file the answering brief is granted. The brief shall be filed on or before 1/7/85.
January 9, 1985	Filed as of 1/8, Original & 15 Appellees' briefs (27 pgs); 15 attachments to appellees' briefs (Note: It appears that these attachments are appellees' supplemental excerpts; 1 day ext. and 2 page oversized orally granted, RGK). 1/8
January 24, 1985	Received as of 1/23, Orig. & 15 Aplt's Reply Briefs. (16 pgs) 1/24 (oversized; needs motion; notified counsel).
January 24, 1985	Received letter dated January 23, from aplt re: aplt were granted ext. of one day to file reply brief (per CIVATT).
January 29, 1985	Filed aplt's mot. for leave of court allowing aplt to file oversized reply brief. (1/29) (CIVATT).
February 7, 1985	Filed Order (Mot. Atty. SMJ) granting appellant's motion for leave to file an oversized reply brief of 16 pages. The brief, received by the clerk as of January 23, 1985 shall be filed.
February 7, 1985	Filed Orig. and 15 aplt's reply briefs previously received.
March 14, 1986.....	Ltr sent to aples, re: failure to designate records.
March 19, 1985.....	Rec'vd response of aple, re: designated record on 3/18.
March 26, 1985.....	Filed Cert. Transc. of Record on Appeal in three volumes: Vol.I-II, Orig. Pldgs, Vol. III, Orig R/T's. *Orig. Deposition Filed in One Envelope.*

April 11, 1985	Cause argued & submitted to: Schroeder, Nelson, Reinhardt, CJJ.
June 27, 1985	Ordered Opinion (Nelson) filed and Judgment to be filed and entered.
June 27, 1985	Filed Opinion—Affirmed in part; reversed and remanded in part.
June 27, 1985	Filed and entered Judgment.
July 9, 1985	Filed Order (Dep. Clk) Pursuant to direction from the court, each party shall bear its own costs.
July 9, 1985	Recvd aplt's bill of costs. 7/3 (see order of 7/9/85).
July 17, 1985	Filed aplt's application for attorney's fees. 7/16 CIVATT
July 17, 1985	Filed aples' motion for stay of mandate. 7/17 (Nelson).
July 24, 1985	Filed aples' opposition to petitioner's request for attorney's fees. 7/23 CIVATT
August 13, 1985	Filed aplt's Memorandum of Points and Authorities in opposition to aple's motion for stay of mandate. 8/8 (Nelson)
August 15, 1985	Filed Order (Schroeder, Nelson & Reinhardt) Appellees' motion for stay of mandate, filed July 17, 1985, is denied. (8/15).
August 23, 1985	Mandate issued.
October 7, 1985	Rec'd SC notice of filing petition for certiorari on 9/25/85. #85-0530.
December 10, 1985	Rec'd letter dated 12/05/85, from aplt's atty re: his disposition on atty fees. 12/05 (CIVATT).
December 13, 1985	Filed cert. copy of SC order of December 9, 1985, *granted certiorari.* #85-0580 (Panel).

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MAGNO J. ORTEGA,
Plaintiff,
vs.
DENNIS M. O'CONNOR, EXECUTIVE DIRECTOR, NAPA STATE HOSPITAL; RICHARD FRIDAY, BUSINESS MANAGER, NAPA STATE HOSPITAL; DOROTHY OWEN, PERSONNEL OFFICER, NAPA STATE HOSPITAL; STEFAN DONOVIEL, CLINICAL DIRECTOR, NAPA STATE HOSPITAL; ASHER RUBIN, DEPUTY ATTORNEY GENERAL, STATE OF CALIFORNIA,
Defendants.

No. 082-4045-RHS
COMPLAINT
(JURY TRIAL DEMANDED)

COUNT I

(VIOLATION OF CIVIL RIGHTS)

1. Plaintiff MAGNO J. ORTEGA is a citizen of the State of California and the United States of America. Plaintiff is and has been since 1964 a licensed physician in California, and is and has been since 1969 a Board-certified psychiatrist in California. From 1964 to September 22, 1981, plaintiff held the position of Chief of Professional Education at Napa State Hospital of the State of California.

2. Defendants DENNIS M. O'CONNOR, RICHARD FRIDAY, DOROTHY OWEN, STEFAN DONOVIEL and ASHER RUBIN, are all citizens of the State of California and residents of this judicial district.

3. The matter in controversy exceeds $10,000, exclusive of interest and costs.

4. This action arises under Title 42 of the U.S. Code, §§ 1343, 1983 and 1985, and this Court has jurisdiction of the action under Title 28 of the U.S. Code, §§ 1331, 1332 and 1343.

5. At all times pertinent to this Complaint, defendant DENNIS M. O'CONNOR was Executive Director of Napa State Hospital, State of California; defendant RICHARD FRIDAY was Business Manager of said hospital; defendant DOROTHY OWEN was Personnel Officer of said hospital; defendant STEFAN DONOVIEL was Clinical Director of said hospital; and defendant ASHER RUBIN was and is a Deputy Attorney General of the State of California. In doing the acts and things hereinafter set forth, said defendants were acting, in their respective capacities as stated, under color of state law of the State of California, and also under color of a custom or useage of management of Napa State Hospital, State of California.

6. On or about July 30, 1981, defendant O'CONNOR abruptly and without legal, reasonable or rational grounds for doing so, and in violation of Government Code § 10574.5, ordered plaintiff ORTEGA to be placed on "administrative leave" from his employment position described above. A copy of the letter from Dr. O'Connor to Dr. Ortega, dated July 30, 1981 "honoring" plaintiff's request to use his vacation leave instead of being placed on administrative leave, and ordering plaintiff to "remain off-grounds" during said two-week period, is attached hereto as Exhibit A and incorporated herein by reference. Said administrative leave was to have lasted for a period of two weeks, extended by defendant O'CONNOR on August 14, 1981 to an indefinite period of time, for the alleged purpose of investigating complaints against Dr. Ortega in the performance of his duties. A copy of the Memorandum from defendant O'CONNOR to plaintiff, dated August 14, 1981 to this effect is attached hereto as Exhibit B and incorporated herein by reference. Defendant O'CONNOR on said date ordered plaintiff to stay out of plaintiff's own private office, and

defendants O'CONNOR and FRIDAY caused said office to be locked and secured and the locks changed so that plaintiff could not have obtained entrance even if he had so desired.

7. On or about July 30, 1981, defendant O'CONNOR and defendant FRIDAY directly ordered and directed two men employed by Napa State Hospital, whose names are presently unknown to plaintiff, to break into and enter plaintiff's private office and seize plaintiff's entire files, possessions, articles and other belongings (hereinafter "articles") in said private office, remove said articles and take them to defendants O'CONNOR and FRIDAY, for the alleged purpose of investigating plaintiff, and withholding said articles from plaintiff for the purpose of intimidating him, interfering with his rights to access to said materials, and coercing, extorting and inhibiting plaintiff in his assertion of lawful defenses to the subsequent termination of plaintiff from his employment position by defendant O'CONNOR. On or about July 31, 1981, the said two men obeyed said orders and directions from defendants O'CONNOR and FRIDAY, and performed the acts alleged herein, conducting a patently unconstitutional Gestapo-type raid that "shocks the conscience" and discredits the State of California.

8. The articles, possessions and belongings seized by defendants and withheld from plaintiff as alleged above, include but are not limited to, the following:

(a) Purely personal correspondence from friends and family;

(b) Photographs of friends, acquaintances and family;

(c) Medical files and correspondence from private patients unconnected with Napa State Hospital;

(d) Appointment book, containing personal notes as well as official appointments;

(e) Personal financial records and accounts;

(f) A file (approximately 18 feet long) of IBM cards, containing teaching aids and notes;

(g) Personal souvenirs, gifts and presents belonging to plaintiff;

(h) Copyrighted manuscript.

Most of the above-listed articles are purely personal to plaintiff in terms of ownership and rights of possession, and do not constitute in any manner official records or property of the State of California.

Plaintiff was never given an inventory of said articles by defendants, and to this date has not obtained the return of said articles. Defendants made copies of many of these articles, circulated them to other faculty members and other persons, and used these articles and materials to investigate plaintiff as well as other colleagues of plaintiff associated with him.

9. On or about August 3, 1982, defendant O'CONNOR also ordered the residents and students who had been under plaintiff's supervision, to refrain from calling or visiting Dr. Ortega in his private home, which home had been used by plaintiff, with official approval, as an off-campus training site, or from contacting plaintiff in any manner.

10. On or about September 14, 1981, and amended on October 26, 1981, a Notice of Punitive Action was served upon plaintiff by defendant O'CONNOR, notifying plaintiff that he was being dismissed from his position as Chief of Professional Education, effective September 22, 1981. Plaintiff thereafter appealed said termination and represented himself in *pro per* in a hearing held before the State Personnel Board commencing on October 29, 1981. During the course of said hearings, on or about October 30, 1981, defendant RUBIN, representing defendant O'CONNOR and the State of California, threatened plaintiff that if plaintiff utilized the testimony of a Dr. Joyce Sutton, a former student and subsequent personal friend of plaintiff's, defendant RUBIN would introduce in cross-examination highly personal evidence to impeach Dr. Sutton found in plaintiff's belongings when they were seized from plaintiff's office. A copy of the letter from defendant RUBIN, dated October 30, 1981, threatening to "offer rebuttal evidence which is in our possession" if Dr. Sutton's testimony was caused by plaintiff, is attached hereto as Exhibit C and incorporated herein by reference. Plaintiff, refusing to yield to this blatant, illegal and unethical attempt at coercion by defendant RUBIN, called Dr. Sutton as a witness on his behalf, and thereafter on November 17, 1981, defendant RUBIN executed his threat as alleged above by introducing into evidence a personal photo-

graph of Dr. Sutton, a Valentine to plaintiff, and a book of poetry given to plaintiff nearly 10 years ago, placing said personal items into the official record as Exhibits.

11. During the defendants' attempt to obtain or create evidence which they could use for grounds to terminate the 17-year employment tenure of Dr. Ortega, on or about July 30, 1981, defendants OWEN and DONOVIEL conspired with each other and with defendants O'CONNOR and FRIDAY to alter a one-month leave of absence issued by plaintiff to one Richard Vaughn, a resident under plaintiff's supervision, which leave would have been legal as issued for a one-month period, to a 6-month leave of absence, which was beyond the legal authority of plaintiff. Said change of date was done for the purpose of obtaining false evidence against plaintiff in support of his termination, and was done without plaintiff's knowledge or permission.

12. Because of the above recited acts, plaintiff has been subjected to the deprivation by the defendants, under color of law, and of the customs and usages of the State of California, of rights, privileges, and immunities secured to him by the Constitution and Laws of the United States and particularly his rights to be free from illegal search and seizure, and from illegal and unwarranted invasion of privacy, guaranteed by the Fourth Amendment to said Constitution; his right to be free from unlawful deprivation of property without due process of law, guaranteed by the Fifth and Fourteenth Amendments to said Constitution; his rights to freedom of speech and association guaranteed under the First Amendment to said U.S. Constitution; his rights reserved or retained under the Ninth and Tenth Amendments to said Constitution; and plaintiff's right to equal protection of the laws guaranteed under the Fourteenth Amendment.

13. Plaintiff alleges that in doing the acts and things above complained of, the defendants were conspirators engaged in a scheme and conpiracy designed and intended to deny and deprive him of rights guaranteed to plaintiff under the Constitution and laws of the United States and particularly those hereinabove enumerated.

14. As the direct consequences and result of the acts of defendants hereinabove complained of, plaintiff was deprived of his property for a substantial period of time; suffered much anxiety and distress over the personal items illegally seized, and much discomfort and embarrassment; plaintiff's reputation was impaired; the intended confidential communications from clients and friends were abruptly violated; the defense of plaintiff's termination from employment was impaired and prejudiced; and plaintiff was irreparably damaged in his career and in his esteemed relationships with colleagues, students, friends and family members. Said actual damages are valued in the amount of $250,000.00.

15. In planning, directing, undertaking and performing the acts alleged above, defendants' actions and conduct were wilfull, malicious and in gross disregard for the rights of plaintiff. Plaintiff is therefore entitled to punitive damages in the amount of $500,000.00.

COUNT II

(PENDENT STATE CLAIM: INVASION OF PRIVACY)

16. Plaintiff hereby incorporates by reference Paragraphs 1 through 15, inclusive, of Count I, above.

17. The seizure, deprivation, and use of plaintiff's articles and belongings by defendants as alleged above was without the knowledge or consent of plaintiff, and constitutes a violation of plaintiff's right to privacy as guaranteed under Article 1, Section 1 of the Constitution of the State of California. By reason of such acts, plaintiff was held up to public ridicule and his privacy was invaded, and he was humiliated and made to suffer embarrassment, to his damage in the amount of $250,000.00.

WHEREFORE, plaintiff prays that judgment be entered against each and every defendant, and that plaintiff be awarded the following relief:

PURSUANT TO FIRST AND SECOND COUNTS

1. An injunction be granted against defendants' unlawful practices and custom of seizing and holding the private property of state employees without a search warrant, court order or other vestige of due process;

2. Actual damages be awarded to plaintiff in the amount of $250,000;

3. Punitive damages be awarded plaintiff in the amount of $500,000;

4. Reasonable costs and attorneys' fees be awarded plaintiff; and

5. Such additional or alternative relief be awarded as may appear to the Court to be equitable and just.

PLAINTIFF DEMANDS TRIAL BY JURY

DATED: July 29, 1982.

GILBERT T. GRAHAM

RAUL S. PICARDO
Attorneys for Plaintiff
MAGNO J. ORTEGA

EXHIBIT R

California — Department of Developmental Services

memorandum

To: Magno Ortega, M.D. — Date: July 30, 1981

Subject: Management Investigation

D. M. O'Connor, M.D.
Executive Director
From: Napa State Hospital

This memo is to confirm our meeting this morning and my expressed intentions to investigate management practices of your department. During the period of the investigation I will honor your request not to be placed on administrative leave given the fact that you are willing to go on two weeks vacation.

In this regard your vacation is to commence at the start of business on July 31, 1981 and *you are to remain off-grounds during the two-week period* unless you have my written approval otherwise. If you have any questions about the investigation or the conditions thereof, call my office and I will clarify issues as needed.

DMO: rmc

cc: Mr. Friday

EXHIBIT A

Dept. of Developmental Services
NAPA STATE HOSPITAL
IMOLA, CALIFORNIA 94558
( ) 253-5000
(707) 253-5768

August 14, 1981

CONFIDENTIAL

Magno J. Ortega, M.D.
P.O. Box 3265
Imola, Calif. 94558

SUBJECT: Administrative Investigation of Professional Education Dept.

Dear Doctor Ortega:

This is to inform you that the administrative investigation of Professional Education is not completed. In order to complete the investigation in an objective and open atmosphere, I am placing you on Administrative Leave with pay. The Administrative Leave is to commence at 0800 on August 17, 1981. You will remain on Administrative Leave until the investigation is completed and I have had the opportunity to consider the findings and reach a decision. Two weeks ago, you requested, in writing, a two week vacation. I would consider a request to extend your vacation, if such a request is received.

In order for the investigation to be completed in a timely fashion, it will be necessary for the Review Team to have an interview with you. Please contact Tom Laskay or Jim Arnold at your earliest convenience.

Sincerely,

D. Michael O'Connor, M.D.
Executive Director

DMO:sa

3 copies mailed to: P.O. Box 3265, Imola, Calif.
1239 Thompson Ave., Napa, Ca.
Professional Education Dept., NSH

EXHIBIT B

SAN FRANCISCO CA
(415) 557-2544

State of California

Department of Justice

George Deukmejian
(PRONOUNCED DUKE-MAY-GIN)

Attorney General
(415) 557-2004
October 30, 1981

Magno J. Ortega, M.D.
1239 Thompson Avenue
Napa, California 94558
Dear Dr. Ortega:

At the conclusion of the hearing on October 29, 1981, you handed me two statements. In my view, this did not constitute a timely response to our written request to you that you provide us with documents you intend to introduce into evidence. I might add, parenthetically, that you still have not complied with our demand that you provide us with the names and phone numbers of your witnesses.

I note that the declaration authored by Joyce Sutton was apparently sent to the Hearing Officer prior to the hearing. This procedure is improper, particularly since no copy was sent to this office. Moreover, if you intend to introduce that document we will be compelled to offer rebuttal evidence which is in our possession. Because of your tardy response to our request, we have been unable to ascertain which documents will be needed to counter Dr. Sutton's declaration. In the interest of fairness, however, we are hereby informing you that we do have relevant evidence bearing on Dr. Sutton's credibility and we do intend to use it should it be necessary.

EXHIBIT C

Finally, if you do introduce the declaration of Dr. Sutton, please so inform us by telephone so that we can subpoena her for cross-examination.

Very truly yours,

GEORGE DEUKMEJIAN
Attorney General

ASHER RUBIN
Deputy Attorney General

AR:gr
CC: James Waller, Hearing Officer

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MAGNO J. ORTEGA, *Plaintiff,* vs. DENNIS M. O'CONNOR, EXECUTIVE DIRECTOR, NAPA STATE HOSPITAL, et al., *Defendants.*	**NO. C 82-4045 JPV** **NOTICE OF HEARING**

PLEASE TAKE NOTICE that on April 10, 1984, at 10:00 a.m., in the Courtroom of the Honorable J. P. Vukasin, Jr., Judge of the United States District Court, a hearing will be held on the motion of plaintiff MAGNO J. ORTEGA for partial summary judgment and/or specification of facts without substantial controversy.

DATED: March 13, 1984.

GILBERT T. GRAHAM
Attorney for Plaintiff

(Declaration of Service by Mail omitted)

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MAGNO J. ORTEGA

Plaintiff,

vs.

DENNIS M. O'CONNOR, EXECUTIVE DIRECTOR, NAPA STATE HOSPITAL, et al.,

Defendants.

NO. C 82 4045 JPV

DECLARATION OF MAGNO J. ORTEGA

I, MAGNO J. ORTEGA, hereby declare:

1. I have personal knowledge of the facts set forth herein, and if called as a witness could competently testify as to the facts set forth herein.

2. I am a psychiatrist admitted to practice medicine in the state of California. From March 1964 until September 22, 1981, I held the position of Chief of Professional Education at Napa State Hospital.

3. My duties at the hospital included supervising psychiatric interns and residents; planning educational programs; procuring educational materials for students; evaluating the progress of students; teaching classes; and other duties.

4. I had the same private office in the suite for Professional Education located on the hospital grounds for the 17 years I worked at Napa State Hospital. It was a private office, opening onto a corridor which ran between my office and the office in which the secretaries were located. My name was on the door of said office. The door locked to said office, and it was kept locked at all times when I was not working therein. To the best of my knowledge, I was the only person who had a key to my office. During my 17 years at Napa State Hospital, until the break-in which occurred near the end of July, 1981, no one ever entered my office without my permission and consent, to the best of my knowledge.

5. The only State property which was in my office was a desk, filing cabinets, book cases and chairs. All of the other books, records, papers and personal articles belonged to me in my private capacity. All of the official records pertaining to the Education Department were kept in the secretaries' office.

* * * * * *

21. The articles, possessions, and belongings seized by defendants and withheld from me include, but are not limited to, the following:

(a) Purely personal correspondence from friends and family.

(b) Photographs of friends, acquaintances, and family.

(c) Medical files and correspondence from private patients unconnected to Napa State Hospital.

(d) Appointment books and personal notes, as well as official appointments.

(e) Personal financial records and accounts.

(f) A file approximately 18 feet long of IBM cards containing teaching aids and notes.

(g) Personal souvenirs, gifts and presents belonging to plaintiff.

(h) Copyrighted manuscript.

22. I was never given an inventory of said articles that defendants seized, and to this date have not obtained the return of said articles. Defendants made copies of many of these articles, circulating them to other faculty members and other persons, and used these articles and materials to investigate me as well as to investigate other colleagues associated with me or supporting me.

23. I appealed the Notice of Punitive Action and represented myself in pro per in a hearing held before the State Personnel Board, commencing on October 29, 1981. During the course of said hearing, on or about October 30, 1981, defendant Asher Rubin, the Deputy Attorney General representing defendant O'Connor and the State of California in the hearings, threatened me directly that if I utilized the testimony of a Dr. Joyce Sutton, a former student and subsequent personal friend of mine, that defendant would introduce in cross-examination highly personal evidence to impeach Dr. Sutton found in my belongings when they were seized from my office during the break-in. A copy of said letter from defendant Rubin, dated October 30, 1981, threatening to "offer rebuttal evidence which is in our possession" if Dr. Sutton's testimony was used by me, is attached hereto as Exhibit J and incorporated by reference.

24. I refused to yield to this blatant, illegal and unethical attempt to coerce me by unconstitutional means, and called Dr. Sutton as a witness on my behalf. Thereafter, on November 17, 1981, defendant Rubin executed his threat by introducing into evidence a personal photograph of Dr. Sutton, a valentine to me from her, and a book of poetry given to me nearly 10 years ago, placing said personal items into the official records as exhibits. A copy of said photograph is attached hereto as Exhibit K and incorporated by reference.

JOHN K. VAN DE KAMP, *Attorney General of the State of California*
NANCY S. WAINWRIGHT
Deputy Attorney General
6000 State Building
San Francisco, California 94102
Telephone: (415) 557-2879

Attorneys for Defendants O'Connor, Owen, Friday, Donoviel & Rubin

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MAGNO J. ORTEGA, *Plaintiff,* v. DENNIS M. O'CONNOR, et al. *Defendants.*	**NO. C 82 4045 RHS** **NOTICE OF MOTION FOR SUMMARY JUDGMENT** **DATE: April 10, 1984** **TIME: 10:00 a.m.** **COURT: Honorable J.P. Vukasin**

PLEASE TAKE NOTICE that on April 10, 1984 at 10:00 a.m. in the Courtroom of Honorable J.P. Vukasin, Jr., Judge of the United States District Court, a hearing will be held on the motion of defendants Owen, O'Connor, Rubin, Friday and Donoviel for summary judgment. The motion will be based upon this notice, the attached motion and memorandum of

points and authorities in support thereof, and on all other pleadings and papers currently filed in this action.

DATED: March 13, 1984

NANCY S. WAINWRIGHT
Deputy Attorney General

Attorneys for Defendants
O'Connor, Owen, et al.

(Declaration of Service By Mail Omitted)

JOHN K. VAN DE KAMP, *Attorney General of the State of California*
NANCY S. WAINWRIGHT
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Attorneys for Defendants Dennis M. O'Connor, et al.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MAGNO J. ORTEGA, *Plaintiff,* v. DENNIS M. O'CONNOR, EXECUTIVE DIRECTOR, NAPA STATE HOSPITAL; RICHARD FRIDAY, BUSINESS MANAGER, NAPA STATE HOSPITAL; DOROTHY OWEN, PERSONNEL, NAPA STATE HOSPITAL; STEFAN DONOVIEL, CLINICAL DIRECTOR, NAPA STATE HOSPITAL; ASHER RUBIN, DEPUTY ATTORNEY GENERAL, STATE OF CALIFORNIA, *Defendants.*	**NO. C 82-4045 JPV** **DECLARATION OF RICHARD FRIDAY**

I, RICHARD FRIDAY, declare as follows:

1. I am the Hospital Administrator at Napa State Hospital.

2. Prior to the time in August 1981 when Dr. Ortega removed the computer located in the Department of Professional Education, I was not aware that Dr. Ortega had removed the computer to his home. It was and is my understanding that the computer was the property of Napa State Hospital.

I declare under penalty of perjury that the foregoing is true and correct and that I am competent to testify thereto.

Executed this day of March, 1984 at Napa, California.

RICHARD FRIDAY, *Declarant*

JOHN K. VAN DE KAMP, *Attorney General of the State of California*
NANCY S. WAINWRIGHT
Deputy Attorney General
350 McAllister Street Rm. 6000
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Telephone: (415) 557-2879

Attorneys for Defendants Dennis M. O'Connor, et al.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MAGNO J. ORTEGA,

Plaintiff,

v.

DENNIS M. O'CONNOR, EXECUTIVE DIRECTOR, NAPA STATE HOSPITAL; RICHARD FRIDAY, BUSINESS MANAGER, NAPA STATE HOSPITAL; DOROTHY OWEN, PERSONNEL, NAPA STATE HOSPITAL; STEFAN DONOVIEL, CLINICAL DIRECTOR, NAPA STATE HOSPITAL; ASHER RUBIN, DEPUTY ATTORNEY GENERAL, STATE OF CALIFORNIA,

Defendants.

NO. C 82 4045 JPV
DECLARATION OF SHIRLEY CIRAULO

I, SHIRLEY CIRAULO, declare as follows:

1. I am an employee of Napa State Hospital in the Professional Education Department. My job title is stenographer.

2. I have performed secretarial functions for the Department of Professional Education since 1974.

3. My office is located adjacent to the office which was, up until August 1981, occupied by Dr. Magno Ortega.

4. I observed that it was Dr. Ortega's custom and practice to lock the office he occupied in the evening when he left, and to unlock it in the morning when he arrived. He left the door ajar during the day.

5. The files of residents working in the Department of Professional Education were kept near my desk. When Dr. Ortega wanted access to them he would ask for a file and, on occasion, remove the resident file to his office.

6. The lock on the office occupied by Dr. Ortega was changed on or about August 17, 1981. The office was sealed by hospital police.

7. After the office was sealed, it was necessary to enter the office on very few occasions to retrieve state hospital correspondence. On those occasions I was required to contact Hospital Protective Services for entry into the office and I was required to have Officer Jim Stratton present while I retrieved that State hospital record/correspondence.

I declare under penalty of perjury that the foregoing is true and correct and that I am competent to testify thereto.

Executed this 27th day of March, 1984 at Napa, California.

SHIRLEY CIRAULO, *Declarant*

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

BEFORE: The Honorable John P. Vukasin, Jr., Judge

MAGNO J. ORTEGA, *Plaintiff,* vs. DENNIS M. O'CONNOR, EXECUTIVE DIRECTOR, NAPA STATE HOSPITAL, et al., *Defendants.*	**NO. C 82-4045 JPV** **SAN FRANCISCO, CALIFORNIA**

REPORTER'S TRANSCRIPT

THURSDAY, MARCH 29, 1984

APPEARANCES:

FOR THE PLAINTIFF: GILBERT T. GRAHAM, ESQUIRE
PHILIP FRIEDMAN, ESQUIRE
240 Stockton Street, Suite 300
San Francisco, California 94108

FOR THE DEFENDANTS: JOHN K. VAN DE KAMP
Attorney General
State of California
6000 State Building
San Francisco, California 94102
By: Nancy S. Wainwright
Deputy Attorney General

REPORTED BY: LAWRENCE J. WHITE, CSR

It appears the Chenkin versus Bellevue Hospital Center case tells us there are three factors as the test of reasonableness in the area of administrative searches. One, strength of the public necessity for the search; two, the efficacy of the search; three, the degree and nature of the intrusion upon the individual.

Strength of the public necessity is the first one. I think public necessity involves a need to secure the office of the facility, particularly when something apparently already has been removed and they have an ongoing concern to the administration to prevent repetition of similar conduct.

It is reasonable to surmise the defendants were concerned about other state property.

As far as the search and seizure, is it efficacious? Under the Chenkin Standard, the objective was attained. State property was secured. Contents of the office were removed so that subsequent to plaintiff's termination the office could be used by another employee.

The fact that personal items were also seized appears less invidious in view of the fact that plaintiff could have come to the hospital to secure his effects and apparently did not do so.

Seizure of personal effects may seem overly intrusive, but the degree of intrusion was minimized, once again, by the consideration of the plaintiff was aware of the investigation and could have participated.

In view of the foregoing, defendants' motion for summary judgment as to plaintiff's 1983 claim is granted.

As to Section 1985 claim, such claim must allege a conspiracy to deprive a plaintiff of constitutionally guaranteed rights based on defendants' racial or class-based animus.

The only allegation of conspiracy has to do with the alleged alteration of dates and the suspension notice.

In addition to being conclusory, there is no allegation of racial or class-based animus, which I think is defective to this claim. Therefore, the defendants' summary judgment as to 1985 claim is granted.

Pendant claims. The plaintiff alleges in two counts of his complaint, in two causes of action, he alleged pendant state claims, except that he does not even attempt—apparently did

not even attempt to present his claim to the state Board of Control.

There are cases which say that substantial compliance is sufficient. Compliance in a strict fashion is not necessary.

But we don't have that kind of situation here. We have here a situation where he has not even attempted to present his claim to the state Board of Control. Therefore, his claim of pendant state claims may not be asserted before this court.

I have already indicated what my ruling will be as to the dismissal of the Attorney General.

The end result of what I have just stated is that I am denying defendants' motion to dismiss on the grounds of res judicata or collateral estoppel, but the sum and substance of my individual ruling is I am granting the defendants' motion for summary judgment on all of plaintiff's causes of action.

MS. WAINWRIGHT: Thank You, Your Honor.

MR. GRAHAM: Your Honor, just for clarification, a couple of points: I am not arguing your decision, which you have already made, but you indicated the State property was secured.

Can you indicate what State property you believe was secured by the search?

THE COURT: The office. The State's contents in that office.

MR. GRAHAM: The second question is you state that plaintiff could have participated.

THE COURT: I'm under the impression he could have participated in the division of the property.

MR. GRAHAM: I don't believe there is any proof before your Honor on that. There is no affidavit or declaration.

THE COURT: Ms. Wainright?

MS. WAINWRIGHT: Your Honor, contained within the depositions there is evidence, and there have been letters attached to those depositions, evidencing the fact that Dr. Ortega was notified that he could come and claim his property both in Mr. Stratton's deposition and in Mr. Friday's deposition. And he was also notified by letter subsequently. And he had been notified by me in those depositions also that he could come and claim his property.

THE COURT: That is after the search.

MR. GRAHAM: The question is the evidence before the court on this motion, not something she heard or saw in deposition.

MS. WAINWRIGHT: In the depositions—

THE COURT: I was under the impression that he could have. If it is erroneous, you may file a motion for reconsideration on my ruling on that basis.

Thank you very much. Court is in recess.

[Hearing concluded]

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA

IN THE U.S. DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MAGNO J. ORTEGA,
Plaintiff,
vs.
DENNIS M. O'CONNOR,
EXECUTIVE DIRECTOR,
NAPA STATE HOSPITAL, et al.,
Defendants.

NO. C82-4045 RHS

DEPOSITION OF DR. DENNIS M. O'CONNOR

WEDNESDAY, APRIL 27, 1983

sense of going to dinners together for the medical staff or on occasion when I was a resident, he had functions at his home which I attended, but all of the socializing in that essence was business-related.

A. I'd like to ask you some questions about the area of administrative leave in regards to Dr. Ortega. Can you ascertain from your files or from your attorney the date when Dr. Ortega was placed on administrative leave?

Ms. WAINWRIGHT: Was that asked in one of your interrogatories?

Mr. GRAHAM: I don't believe so.

Q. Can you ascertain from that form which is entitled, "Employee Attendance Record," when he was officially placed on administrative leave?

A. From the form and I don't have the official letter in front of me, but from the form, and it coincides with my recollection of the time frame, it was August 17, 1981.

Q. Now, a couple of weeks before that date, did you have a conversation with Dr. Ortega and basically you asked him to go on administrative leave?

A. Yes.

Q. To the best of your recollection, and I will show you a calendar if it helps to refresh your recollection, was that about July 30, 1981?

A. I believe that is correct.

Q. That was a Thursday; is that correct?

A. Again, to the best of my recollection, that is correct, yes.

Q. And to the best of your recollection then on that Thursday when you spoke with him, did you state that you wanted him to go on administrative leave for certain stated purposes?

A. Yes.

Q. What were the reasons why you said that he should go on administrative leave at that time?

A. The reason was that I was going to conduct an investigation of his administrative practices.

Q. Did you say anything else besides that in that conversation with Mr. Ortega?

A. Well, we had a discussion about whether or not the administrative leave was absolutely necessary, and he in fact requested vacation which I granted.

Q. In that conversation, he asked that he be allowed to take the next two weeks vacation time rather than administrative leave; is that correct?

A. That is correct.

Q. Was your original oral request that he go on administrative leave for two weeks or fifteen days?

A. I don't remember if I put that specific a time on it. I did tell him as I previously just testified to, that he had requested that he be on administrative leave pending investigation. And he then asked me for a possibility for a vacation, which I then granted.

Q. Let me show you a memo from you to Dr. Ortega dated July 30, 1981. Basically, that memorandum confirms just what you have stated, namely, that you accepted him taking the next two weeks in vacation rather than in administrative leave; is that correct?

A. That is right.

MR. GRAHAM: Let's mark that one next in order. That should be Exhibit B. And also mark this form that you referred to a little bit earlier, the Employee Attendance Record of Magno J. Ortega as Exhibit C.

(Whereupon, a one-page memo dated July 30, 1981 to Magno Ortega, M.D., from D.M. O'Connor, M.D., was marked for identification as Plaintiff's Exhibit B.)

(Whereupon, the Employee Attendance Record of Magno J. Ortega was marked for identification as Plaintiff's Exhibit C.)

MR. GRAHAM: Q. Dr. O'Connor, on or about August 14th, then did you conclude that the administrative investigation of Dr. Ortega had not been completed and you placed him on administrative leave for the next fifteen days commencing August 17th?

A. Yes.

Q. Let me show you a letter which is to Dr. Ortega from you dated August 14th, 1981, and that is a copy of a letter you sent to him; isn't that correct?

A. Yes, that is correct.

MR. GRAHAM: We will mark that as Plaintiff's Exhibit D.

(Whereupon, a copy of a letter from D. Michael O'Connor, M.D. to Magno J. Ortega, M.D., dated August 14, 1981 was marked for identification as Plaintiff's Exhibit D.)

MR. GRAHAM: Q. Dr. O'Connor, now from these last two exhibits and from your own recollection, I just want to get straight the actual working records of Dr. Ortega.

He was then on vacation from July 30 until and up until August 17; is that correct, on actual vacation time?

A. Well, the week—the vacation started on the 31st and ended on the 14th, and then there was a weekend, the 15th and 16th.

Q. What kind of time would the 15th and 16th be charged to?

A. That's just weekend time. It's not charged to anything.

Q. That was not vacation? You don't get charged for vacation on the weekends?

A. Right.

Q. So, he would be just paid on his regular salary basis?

A. Yes.

Q. And his regular commenced on August 8?

A. Yes.

Q. When did it terminate?

A. I am not certain, but looking at the Employee Attendance Record, the last noted date that I can detect is that it ended on September 22, but I am not positive. I don't see the memo that I sent and I don't know where it is.

Q. In your letter of August 14, 1981, which is Exhibit D, you indicated that he remained on administrative leave until the investigation was completed; is that right?

A. Yes.

Q. And you believe that from the Employee Attendance Record it continued until what date?

A. From this, again, I am not sure because I don't have the memo in front of me and I don't remember the exact date, but the date here is September 22nd.

Q. So, you do have a memo that would reflect that, is that right, in your files?

A. Right.

Q. Is an employee paid while they are on administrative leave?

A. That's on the option of the appointing authority.

Q. Was he paid? During that period of time, who was the administrator?

A. I chose.

Q. He was paid up until what date?

A. To my understanding again, I am just going from memory because I don't have the documents in front of me, and my memory of it was he was paid until the date of termination.

Q. What date was that?

A. I don't recall.

Q. Does that appear from the records that you have or anything that you have?

(pages 8-12)

* * * * *

A. No.

Q. Did you know it at the time you placed him on administrative leave?

A. No.

Q. Now, what specifically were the reasons supporting your conclusion that you were justified in putting Dr. Ortega on administrative leave when you did so in August of 1981?

A. Specifically they revolved essentially around concerns of what my hospital administrator felt were violations of contractural procedures, had to do with the obtaining of a computer by means which seemed to be cloudy at best at that time, had to do with an allegation by one of the doctor's supervisees that the residents had coerced to provide donations to purchase a computer which I thought had been donated by a company, and also had to do with—

Q. Excuse me. Did you say buy a computer or buy a printer?

A. Buy a computer.

Q. Fine.

A. Also, what seemed at the time had been what occurred —you are asking me about the start of it?

Q. Yes.

A. That the allegation that the person had been put on a leave of absence without their will and without going through the personnel office, and basically administrative things.

Q. What documents did you review when going over these allegations prior to placing Dr. Ortega on administrative leave?

A. I reviewed documents that had to do with the purchase of computer equipment. I am not that familiar with computer language, so I don't recall the names of it. I reviewed documents that had to do with my thanking people for donating a computer. A letter that was written by a resident complaining about some administrative matters that I have just mentioned.

Q. Who is that resident?

A. Dr. Richard Von. And I also reviewed off and on for a period of weeks some contractural—some contracts, consultant contracts that my hospital administrator had been very concerned about.

Q. Some consultant contracts?

A. Yes.

Q. Who was concerned about it?

A. My hospital administrator.

Q. Who was that again?

A. Dick Friday.

Q. Anything else?

A. Those covered the basic administrative areas of concerns to me at that time.

Q. Do you have any of those documents with you today?

A. No.

Ms. WAINWRIGHT: Once again, I will explain that these have been produced to Dr. Ortega on September 24, 1981. They were mailed again on October 11, 1981, and the list of them have been provided to you.

MR. GRAHAM: Well, we are really at a loss because we don't know what documents you are talking about.

MS. WAINWRIGHT: They were identified in my response, supplemental responses to interrogatories, and there is a declaration from Dorothy Owen.

MR. GRAHAM: Q. We will refer to that if you want to give us a copy of that or we can use my copy.

Doctor, tell us which of these doctors prior to placing Dr. Ortega on administrative leave—

A. I remember invoices for the consultation services, looking at the contract requests.

Q. You'd better identify them specifically and read the whole thing.

A. Now, this is prior to the investigation but when I put him on leave?

Q. Yes.

A. Invoices for consultation services of Dr. Saeedi, seven; contract for Mr. Saeedi from 3/26/81 to 6/30/81, $85 a day; contract for Mr. Saeedi from 7/1/81 to 6/30/82, $150 per day. There is the sub-purchase order MODEM and timer; sub-purchase order for disc, Monito and Applewriter; letters from Dr. O'Connor, To Whom It May Concern, to thank contributors for acquisition of Apple computer; a letter from Dr. O'Connor to Mr. Ahmad Manshouri for donation of Sellum II printer and associated hardware; a letter from Dr. Vaughn dated 7/28/81; a memo from Dr. Ortega to Dorothy Owen regarding Dr. Vaughn; and a memo from Dorothy Owen to Dr. O'Connor regarding Dr. Vaughn. That is basically the material I recall that I saw that is on that list prior to the meeting.

Q. So, you were concerned about the computer? What were your concerns about the computer primarily?

A. Primarily around the issue of how the computer was obtained and under what circumstances. I don't know if you ever worked in State service, but until very, very recently, in fact, there were real concerns by the bureaucrats in Sacramento around the acquisition of computers or—it's a very sensitive thing for us managers, so that is kind of a backdrop and I was concerned about that initially.

Q. You are saying the manner of acquisition, that was your concern?

A. I don't know how to put this exactly. There is real scrutiny by people who work in Sacramento, Department of

General Services, and our departments, but my specific concern was essentially that Dr. Ortega led me to believe that a computer had been donated to the hospital when in fact, as these events unfolded, it became very clear to me that that was not the case. The company was not in fact given—again we are talking about before the investigation, and it seemed to be in process around acquiring this computer. That was very bizarre with me. I couldn't understand exactly what it was. In light of the fact that Dr. Ortega asked me to sign letters thanking to whom it may concern which in my impression, from what

(pages 18-21)

* * * * *

Ms. WAINWRIGHT: Again, object to the question.

MR. GRAHAM: Are you telling him not to answer?

Ms. WAINWRIGHT: That is correct.

MR. GRAHAM: This is going to be a very long proceeding the way you are going. Really, you are going to have days of depositions.

Ms. WAINWRIGHT: Is that a threat?

MR. GRAHAM: That is just a statement. This thing was to take two hours, and this is going to take days. I am narrowing down to the allegations. I want to know about this lawsuit. You can't get away with these objections. They are going to laugh you out of court on them.

Ms. WAINWRIGHT: Fine.

MR. GRAHAM: Q. When did you then commence the investigation of Dr. Ortega?

A. I believe it was very shortly after the meeting that he had and I had when he went on vacation, and probably that was, if my recollection is correct, it was on a Thursday. No later than that following Monday, and I can't remember precisely if we started the very next day, but it was very shortly after he went on vacation.

Q. What did the investigation involve?

A. Well, the investigation involved essentially looking into the major areas that I discussed. That was the focus of it.

Q. Who conducted the investigation?

A. I had an accountant, Mr. Arnold, because he was familiar with contractural issues. He was one of the people I

selected. We have a hospital police officer who is an investigator also, and I had him involved in it since he is one of my investigators.

Q. What is his name?

A. I am blanking out on his name, now. Jim Stratton. And then since some of the allegations involved medical residents, psychiatric residents, and since Dr. Ortega is a physician, I put Dr. Laskay on the investigating team because he is a physician in the office of program review. There were three people that conducted the investigation.

Q. What was the name of the first one?

A. Dr. Laskay, Dr. Arnold and Jim Stratton.

Q. Did they produce a written report?

A. Not an official written report, but we had a series of meetings in which they briefed me on the progress of the investigation and the witnesses that they had talked to, people they had contacted and so forth.

Q. Are there any other notes reflecting the contents of those meetings?

A. Yes. In fact, I think this came up in the personnel board hearing that Dr. Laskay had taken some notes during the meetings with the residents.

Q. Do you have copies of those notes?

A. No.

Q. Do you have any in your files?

A. His personal notes? No.

Q. Are there any notes besides his personal notes?

(pages 26-27)

* * * * *

tion. I am not sure if you are thinking about a certain specific form or—

Q. Are you aware that the residents sent a letter asking for justification for the State to purchase a computer sometime in March of 1981?

A. No.

Q. When were you first aware that the computer had been purchased?

Ms. WAINWRIGHT: I am going to object. I don't think that he was aware that it had been purchased.

MR. GRAHAM: Q. All right. Obtained?

A. I am not really sure to be honest with you. There was a lot of concern around the training and the contracts, and I became aware that a computer had been obtained for the hospital in mid-April, 1981, and Dr. Ortega told me that that computer had been donated to the hospital. I remember I was very surprised that somebody would donate a very expensive piece of equipment to the hospital. So surprised, that I even signed thank you notes thanking them for their contributions.

Q. Did you sign these statements in April?

A. It must have been the Wednesday before the Boston Marathon, April 19 of that year.

Q. When you say expensive piece of equipment, the computer itself only cost about fifteen hundred, didn't it?

A. We have different ideas of expensive. I don't have any carpets on my floor and I think it was a $2,000 piece of equipment and very expensive for hospital managers.

Q. Weren't you pleased to hear then that the residents had obtained the use of the computer?

A. I wish that they had. They haven't even seen it for two years.

Q. They did have it in the Spring of 1981?

A. They had it for a few weeks, yes.

Q. Didn't they have it until you began termination procedures against Mr. Ortega?

A. Well, they had it until Dr. Ortega removed it in mid-August, yes.

Q. Were you aware that Dr. Ortega had had removed the computer at other times for the weekend before he removed it in August?

A. I don't think so. I am not sure if that came up at the hearing or not. The first time I was aware that it had been removed to his home was when it disappeared over the weekend.

Q. When did Dr. Ortega take the computer home in the times that you are talking about now?

A. You mean the time that I am aware of?

Q. Yes.

A. I believe it was on the weekend of August the 15th and 16th, and I don't know whether it was the Saturday or the

Sunday, but it was over that weekend between his vacation and the start of his administrative leave.

Q. When were you first aware that he did take the computer home?

A. I believe it was on Monday, August 17th.

Q. How did you become aware of it?

A. One of the hospital officials came to my office and told me that the computer was missing, and that Dr. Ortega had called in to his secretary and said that he had come in and taken it.

Q. Do you know about what time it was when you were informed of that?

A. No.

Q. Who was the person that informed you?

A. I am not sure. I don't remember which hospital official it was.

Q. Do you have any notes or documents that would indicate who that was?

A. I am not sure about that.

Q. Do you think it's possible that you would?

A. It's possible, yes.

Q. Do you have any recollection, even general recollection, that there might be some documents that would say that?

A. What I remember is again being very surprised and asking the people to look around, maybe it had been misplaced. People looked around and Dr. Ortega called and told the secretary that he came in and took it. I vaguely remembered that there was a memo written. I do remember that we considered it a theft at that time because the ownership of the computer—I thought it was ours. We conducted what we would normally do on a piece of expensive equipment, stolen from the hospital, and conducted

(pages 32-34)

* * * * *

removed the computer from the hospital one of the grounds for which he was terminated?

A. No.

Q. Were all of the grounds for which Dr. Ortega was terminated specified in his letter of termination?

A. Yes.

Q. At some point in time, did you have anything to do with people entering Dr. Ortega's office and going through some of his possesssions?

Ms. WAINWRIGHT: Counsel, be more specific. Have anything to do with what? You mean did he do this himself or did he order it? What do you mean?

Mr. GRAHAM: That's what I mean. Did you have anything to do with it?

Ms. WAINWRIGHT: I am going to ask that you be more specific. You question is vague.

Mr. GRAHAM: Q. I don't think you can be more specific than that. Do you understand the question?

A. I think so.

Q. Tell us about that.

A. Only inasmuch as I put together an order that an investigation be conducted. I did not map out the strategy to tell the investigator how to investigate or my accountant how to account. I just told them to investigate.

Q. Who decided to go into Dr. Ortega's office?

A. I am not sure about that.

Q. Do you know when they did go into his office?

A. No, I don't know the date.

Q. Is there a memo reflecting when they went in?

A. Not to my knowledge.

Q. Did you know that they were going to go into Dr. Ortega's office before they did that?

A. Not specifically.

Q. What do you mean by not specifically?

A. Well, I didn't have it on my mind, that part of the investigation, to do this, do that. I didn't have it on my mind when I told the three investigators to investigate.

Q. Were the investigators then who initiated the action to go into Dr. Ortega's office without his permission?

A. I don't know.

Q. You mentioned in your previous answers that you didn't direct the investigation. I inferred that the investigators were the ones that did it? You don't know who went into his office?

Ms. WAINWRIGHT: That wasn't your question.

Mr. GRAHAM: I didn't say it was.

THE WITNESS: I don't know what question I am answering.

MR. GRAHAM: Q. Who went into Dr. Ortega's office?

A. For the purpose of investigation?

Q. For any purpose. We are talking about who went in and unlocked Dr. Ortega's office for the purpose of investigation in regards to his employment and entered it?

MS. WAINWRIGHT: Excuse me.

(Short discussion off the record)

THE WITNESS: My understanding of that was that, again, I am not sure who exactly went in, but my understanding of it was that the investigator, Mr. Stratton, did go into his office to separate the State property from what may have been Dr. Ortega's personal property and also to look for contractural or other kinds of documents that might have been related to the issues that we already discussed in some detail. I don't know of any other person specifically that went into that office.

Q. Do you know whether or not Mr. Stratton had any permission from Dr. Ortega to enter there?

A. No.

Q. You don't know? In fact, he didn't have any such permission; isn't that correct?

A. I don't know.

Q. Did this happen while he was on vacation, meaning Dr. Ortega?

A. Again, I am not sure. I believe that the sorting out of the material did happen during the time Dr. Ortega was on vacation, but I am not positive.

Q. When was the first time you were informed that someone from the hospital had gone into Dr. Ortega's office and gone through his belongings?

A. Well, my recollection of it was—when I became aware of it?

Q. Yes.

A. My recollection was we became very concerned when the computer was missing that this, in fact, we would

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Q. What kind of State equipment do you think he might remove other than the computer?

A. I don't know.

Q. Had Dr. Ortega ever removed any State property apart from the computer in the seventeen years he worked for Napa State Hospital?

A. Well, I had information that he had, yes.

Q. Like what?

A. I had information that he in fact had a typewriter or two that belonged to the State.

Q. When were you informed of this?

A. Again, I don't remember.

Q. It was during the termination hearing, wasn't it?

A. So much was said at that time. More than likely, yes.

Q. Are you saying that the fact that Dr. Ortega removed the computer was some sort of justification for somebody going into his office?

A. No.

Q. Was there any connection between them actually?

A. Well, only that as much as you asked me specifically when did I become aware of the issue of Dr. Ortega, and my response was when my hospital administrator informed me of that, that we should change the locks.

Q. You are talking about the locks to Dr. Ortega's office?

A. That specifically.

Q. Had the locks been changed at the time he informed

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A. I don't remember if it does or not. I would assume it doesn't but I am not sure. I am sure Dr. Ortega does.

Q. So, I don't quite understand your assumption. It happened after the 17th because he still had a key to the outside office?

A. Well, again, I don't know what locks were changed. I don't know if one lock was changed or several locks were changed. I don't have that information. I know specifically that the locks to his office were changed. Whether or not his other locks were changed as a security measure, I don't know.

Q. Is it your position that the investigators were authorized to go into Dr. Ortega's office without his permission?

A. Can you restate that?

Q. Is it your position that the investigators in regard to Dr. Ortega's employment were authorized to enter his office without his permission?

A. Yes.

Q. What is the reason for that? Why do you think that they were justified?

A. Basically what we were trying to do is to remove what was obviously State records or records that had to do with his program, his department, any of the materials that would be involved in running the residency program, around contracts, around the computer, around the areas that we were interested in investigating, and we wanted to—I felt it was reasonable to have access to what that material might be and also to separate out what was his and for him to get it because we needed office space.

Q. Did you consider asking him doing this for you rather than having somebody go into his office and going through his things without his permission?

A. I specifically did not do that, no.

Q. That was not done so far as you know, correct?

A. So far as I know, it was not done, yes, that's right.

Q. So, as far as you know, only Jim Stratton went into his office?

A. As far as being under sworn testimony, I know of only for certain that Jim Stratton did, and others may have gone in. I only know for sure that Jim Stratton went in.

Q. How many people went into the contents of Dr. Ortega's office at any time?

A. I don't know.

Q. Do you have any idea?

A. See, I have never been in that office since I left the program many years ago. I don't know who was in that office.

Q. In the answers to interrogatories, it specifies several different people who were in there. Do you know where that information came from?

A. Probably from other people who gave testimony.

Q. But you were never even informed of any other persons who looked at the materials in his office except

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the date they were taken until the present date. Thomas Laskay, Richard Friday, and Lewis Langoria."

Do you have any information?

Are you saying that some of these people here did other things than view the documents or review them?

A. Do you mind if I take a look at that because I am trying to be helpful. I think the only thing or person who I didn't mention is Lewis Langoria, and I believe he was at that time, too, and again, I don't know my sense of this, but it has to do with controlling custody, and in fact, I believe Dr. Ortega still has material that is his personal belongings in the control and custody of the hospital. One of our peace officers, probably Mr. Langoria, would be the person who would have custody. What we usually do is have it with one of our peace officers. Mr. Friday is the hospital adminstrator and I have already mentioned the two other people.

Q. But of these two people that we have just named, they have not reviewed or viewed the materials so far as you know?

Ms. WAINWRIGHT: Do you mean viewed in the books or viewed each item or gone through each item?

MR. GRAHAM:

Q. Which of the people listed here in your answers to number 14, so far as you know, has actually read through or looked at the individual possessions and articles that were in Dr. Ortega's office?

A. Read through the individual articles?

Q. At least some of them.

A. At least some of them?

Q. Yes.

A. Which would include one?

Q. Yes.

A. Well, I have. I have looked at least one of them because they were presented at the hearing. I am not sure about Mr. Friday. I know Dr. Laskay has because he was at the hearing. I am not sure about Mr. Arnold. I doubt if Mr. Langoria—I haven't seen the boxes, so I don't know what they are now.

Q. Are you saying that you didn't look at any of these articles before the hearing?

A. No, I didn't say that.

Q. You actually looked at them before the hearing?

A. Yes.

Q. And you looked at some personal possessions of Dr. Ortega?

A. Yes, I did.

Q. And you saw personal letters; is that correct?

A. Well, I did not specifically say what I would consider to be personal letters. I did see a note and a poem.

Q. Did you see any Valentines?

A. Yes, a Valentine.

Q. Did you see any photographs?

A. Yes, a photograph.

Q. Did you regard any of these as personal items or State items?

A. Personal items.

Q. Is it your position that your State has authority to go into and look at State employee's possessions which are in their office without that employee's permission?

A. It's my position that for the purpose of trying to determine what is involved in a State action and what is not, and what is personal and what is private, that is appropriate, yes.

Q. In other words, that the State has the authority to go in and look through all of the person's belongings to see whether they are public property or personal property; is that what you are saying?

A. Yes.

Q. But in fact, some of the personal items were used in the hearing against Dr. Ortega; isn't that correct?

A. Yes.

Q. Who was present when you say these personal items that you just testified to—

A. You mean when I first saw these items?

Q. Yes.

A. I am not positive. I think that to the best of my recollection, it was Mr. Friday. It may have also been Dr. Laskay, but I am fairly sure about that. I don't remember

specifically, but I think those were the two people that showed it to my attention.

Q. How many different occasions did you view these items that were in Dr. Ortega's office?

A. Again, specifically of the items that I have viewed were the ones you just articulated, a Valentine, a picture, and a poem and a book which was a small book. I didn't review anything else or letters or anything else I looked at that initial material on one occasion and then probably once before the hearing, and then during the hearing, it also came up, so probably three different times.

Q. So, the first occasion was with Arnold and perhaps Laskay?

A. No, I said Friday.

Q. Excuse me. Mr. Friday and Laskay? On the second occasion, who was present with you at the time?

A. I believe it was Mr. Rubin and Mr. Laskay, I believe.

Q. Where did that meeting take place?

A. In my office.

Q. How much prior to the termination hearing was that meeting held?

A. Through the hearing themselves?

Q. Yes. How long prior?

A. Pretty close to the hearing. Action had already been taken because Mr. Rubin was our counsel and just before the hearing, I don't recall the exact date of it, though.

Q. Mr. Rubin also had access to these articles and reviewed them?

A. Those several items, yes.

Q. But his name is not listed to this answer to

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through his belongings?

A. Well, again for the purposes of trying to look at the issues around the obtaining of the computer and the contracts and where documents might be placed, if in fact they are State documents on State property, I would assume, yes, he would look to see if those documents exist in his office.

Q. Had this practice of going into doctors' offices have ever been done at Napa State Hospital?

A. I recall an instance in which we found in an office—Well, I am not sure exactly, but there was an episode where we found information in an office that led us to believe that there were reasons for adverse actions.

Q. So, you have gone into somebody's office in another occasion without their permission?

A. I don't recall whether or not we had the permission. I don't know if the person was there or not. This was five or six years ago.

Q. Is it any part of the hospital's rules, regulations that an employee cannot have personal property or belongings in his or her office?

A. There is no rule against that.

Q. Was Dr. Ortega permitted to have private patients?

A. I don't understand the question.

Q. Dr. Ortega's role as Chief of Professional Services at Napa State, was there any prohibition against him handling any private patients on the side?

A. On hospital time or hospital grounds, yes.

Q. Aside from hospital time, how about hospital grounds?

A. No, not on hospital grounds, no.

Q. Were there any files relating to private patients that were discovered in Dr. Ortega's office so far as you know?

A. I believe there was, yes.

Q. Do you know if anybody entered or reviewed the contents of those files?

A. My only recollection of what it was was some billings or something like that and we had wondered whether or not he performed certain duties of private practice on State Hospital time, but we did not pursue that.

Q. You're talking about medical billings?

A. I think so, yes.

Q. Somebody viewed those files, and whether they constituted improper billing—

A. We thought there might be that Dr. Ortega was using his office or State time to conduct other than what his job as Chief of Professional Education was, but again, there was no evidence to pursue that and that was not part of his punitive action.

Q. Did you see the contents of these particular patients relating to the outside?

A. I vaguely recall seeing a bill regarding something medical, but I didn't pursue it.

Q. Do you know if anybody did pursue it?

A. I don't think so, not to my knowledge as far as I

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A. I don't believe so, no.

Q. When was Dr. Ortega's office given to another doctor? In other words, when did a new doctor take over that office?

A. I am not sure.

Q. Do you have a general idea of how long it was after Dr. Ortega had left the hospital?

A. A general idea, I'd probably say weeks as far as somebody actually calling it their office and being in there full time.

Q. Was anybody taking over that office before Dr. Ortega's administrative hearing on his termination were concluded?

A. My recollection of it was the way I asked of one of the physicians who worked in the area with Dr. Ortega to act during the period of time he was on vacation and on administrative leave, and I believe that person had his own office, so I don't know that anybody actually took possession of his office for probably several weeks until we had a more permanent solution or a permanent director of the program who was not this person who was subbing in the interim.

Q. Who made the decision to move into that office? Was it Mr. Friday or someone else?

A. When we chose the Chief of Education, subsequent to Dr. Ortega's dismissal we requested that she have an office, and I think it was at that time that Dorothy Owen was contacting Dr. Ortega to get his boxes of belongings

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the ones that come to mind first, Mr. Stratton and Mr. Friday, to determine which of the overall items should be given to you and perhaps to be reviewed and to be usable in the hearing; is that right?

A. Yes.

Q. Aside from the assertion of Mr. Rubin, there is nobody else that comes to mind besides those two?

A. No.

Q. In the items which were in Mr. Ortega's office, the items and the belongings and articles and so forth, how would you ascertain which of these matters were State property and which were personal property?

A. How would I?

Q. Yes.

Q. Well, I think basically it would be only obvious. For example, most items that the State issues have numbers and they have a little property number marked on them, and we are real careful about the property, so as far as physical items, unless you get down to the pencil or State pen, but basically physical problems start with documents or files. I think that—I can't think of a State document that doesn't either have a form number or sort of a letterhead or a governor's name like this stuff here (indicating).

Q. Because of the letterhead at the top?

A. It has a seal. When you look at that, you know it has something to do with business. You would know it would be State Hospital business without even reading it.

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OFFICE OF THE ATTORNEY GENERAL

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MAGNO J. ORTEGA,
Plaintiff,
vs.
DENNIS M. O'CONNOR, EXECUTIVE DIRECTOR, NAPA STATE HOSPITAL; et al.,
Defendants.

No. C 82-4045 RHS

DEPOSITION OF RICHARD FRIDAY

TUESDAY, JUNE 28, 1983

A. I wasn't involved in any meetings.

Q. Before that time?

A. Right.

Q. How about the time before he went on vacation until he was officially placed on administrative leave, which I think was between July 30th and August 17th?

A. I think there was one or two meetings.

Q. Do you recall whether anyone else was present besides you and Dr. O'Connor?

A. I think Dorothy Owen, the personnel officer, was present.

MS. WAINWRIGHT: O-w-e-n.

MR. GRAHAM: Q. She was present at one meeting?

A. I think so.

Q. At some time in 1981 in regard to the termination of Dr. Ortega was a team of people appointed to be investigators?

A. That's correct.

Q. And who were those investigators?

A. If I recall correctly, I think Jim Stratton, Jim Arnold, and Dr. Laskay.

Q. Who appointed these investigators?

A. If I recall correctly I think Dr. O'Connor did.

Q. Did he obtain any input from you as to who should be the investigator?

A. He asked for my recommendations.

Q. Did you give him any recommendations?

A. I recommended Jim Arnold.

Q. Did you recommend anyone else?

A. I recommended that somebody from John Henry's office should be considered.

Q. That's the security police?

A. That's right.

Q. Was somebody there appointed?

A. That was Jim Stratton.

Q. Did you make any other recommendations?

A. No.

Q. Just those two?

A. Uh-huh.

Q. You didn't recommend Dr. Laskay?

A. No.

Q. Do you recall why you recommended Mr. Arnold?

A. I felt that Mr. Arnold was very expertise in financial matters as well as basic administrative problems.

Q. And you talked to him about it?

Ms. WAINWRIGHT: Who are you referring to?

MR. GRAHAM: Q. Excuse me, you talked to Mr. Arnold about it before he was asked to be an investigator?

A. I asked him if he would be willing to assist if Dr. O'Connor asked him.

Q. He indicated he would?

A. He indicated he would.

Q. Were you aware of any agreements or disagreements between Dr. Ortega and Mr. Arnold prior to the time that the investigation took place?

A. No.

Q. Were you aware whether there were any disagreements between Dr. Ortega and either Dr. Laskey or Mr. Stratton before they were appointed?

A. No.

Q. And you didn't recommend Mr. Stratton himself; is that right?

A. No.

Q. Was that selected by Mr. Henry?

A. That's correct.

Q. And tell us, briefly, the roles that each of these three was supposed to carry out in the investigation?

A. Well, the basic role was to check out any of the statements that had been made regarding sexual harassment, any of the—check out who owned the computer. At least that was basically Mr. Arnold's role. I'm not sure of all the roles that Dr. Laskay had.

Q. Who told these investigators what their duties and roles were supposed to be? Was that you or Dr. O'Connor or someone else?

A. I don't know what Dr. O'Connor told them. I know what I told Mr. Arnold and Mr. Stratton.

Q. Was it your responsibility to tell them what their duties were going to be in the investigation?

A. I think it was, yes.

Q. What did you tell Mr. Stratton to start with?

A. I told Mr. Stratton and Mr. Arnold to try to determine who owned the computer.

Q. Anything else?

A. That I had also asked them to review or check Dr. Ortega's office out in order to separate the business files from any personal files in order to ascertain what was in his office.

Q. And when did you tell them to undertake these particular duties in regard to the administrative leave? Was it before Dr. Ortega was placed on administrative leave, or afterwards?

Ms. WAINWRIGHT: You're speaking of the August 17th date?

MR. GRAHAM: Q. There's a July 30th date when he went on vacation, and an August 17th date on administrative leave.

A. I think it was August 17th.

Q. Was it after that, then? Shortly after?

A. Was August 17th on a Friday?

Ms. WAINWRIGHT: We will go off the record.

(Discussion off the record.)

Ms. WAINWRIGHT: Back on the record. We are assuming that August 17 is a Monday?

MR. GRAHAM: Q. Right.

A. I believe that the vacation time or the vacation/administrative leave time ended on a Friday, and Dr. Ortega was placed then on administrative leave effective the 17th, which was a Monday, if that's what we're assuming.

Q. So this conversation with Mr. Stratton and Mr. Arnold, did that happen then after that Monday?

A. After, that's right.

Q. How close to that date was it?

A. I don't recall.

Q. Was it within a couple of days or so?

A. Within four or five days.

Q. Now, specifically, what did you tell them in regard to going into Dr. Ortega's office and separating the business files from the personal files?

A. Basically I wanted to make sure that we had our state property identified, and in order to provide Dr. Ortega with his property and get what we had out of there, in order to make sure our resident's files were protected, and that sort of stuff.

Q. Was this oral or in writing?

A. Oral.

Q. And who all was present? Just you and Mr. Stratton and Mr. Arnold?

A. Uh-huh.

Q. Was Dr. Laskay present?

A. No, he wasn't.

Q. Was he involved at all in your instructions to do this particular task as far as sorting out the records?

A. I don't recall that he was at that time. I think he did go down there once with Mr. Stratton and Mr. Arnold.

Q. But he was not the recipient of any instructions by you?

A. Not directly from me.

Q. Now, in regard to that particular instruction or directions about going into Dr. Ortega's office did you regard that as a regular part of investigation, or was it more irregular?

A. I considered it regular, because I had done it before when I was a personnel officer at DeWitt. I did call for legal advice before we did it.

Q. And who did you call for legal advice?

A. I called our—I made contact with our attorneys in the department.

Q. Mr. Rebin?

A. No, in our department.

Q. Okay. Did you tell Mr. Stratton and Mr. Arnold how they were supposed to get into the office, into Dr. Ortega's office in order to review the files?

Ms. WAINWRIGHT: I'm going to ask for clarification. Do you mean how they were to—

MR. GRAHAM: Q. Physically enter and so forth?

A. Well, they were provided a key, a special key, and they entered.

Q. And who provided them the special key?

A. I did.

Q. This was a key to Dr. Ortega's own private office in the suite; is that right?

A. To the best professional education director's office.

Q. As I understand it, there is an outside door to the whole department?

A. That's right.

Q. There's a lock on that, right? All the employees that work there have a key to it?

A. That's correct.

Q. And then the individual employees that have an office of their own, a private office, they would have a key to their own office also?

A. They may have a key. It may not be a completely private key, but they would have a key.

Q. And besides an employee such as Dr. Ortega, who else would have a key to their office besides the person who has that office?

A. I don't know who would.

Q. But you would, you would have keys to all of them, right?

A. I would, yes.

Q. And you gave them the key on the same day that you talked to them, a few days after Dr. Ortega had been placed on administrative leave?

A. Something like tha "h-huh.

Q. Did you ask Dr. Ortega whether or not they could enter his office?

A. No.

Q. Did you consider it was not necessary to ask Dr. Ortega?

A. At that point in time, yes.

Q. At some later point in time did you change that opinion?

A. No.

Q. I didn't understand exactly what you meant by "at that point in time." Did that have any particular meaning in your answer?

A. No.

Q. Do you know when in relation to that particular meeting you had with Mr. Stratton and Mr. Arnold that they did enter Dr. Ortega's office to go through his files? In other words, do you know whether it was a few days after that or shortly thereafter?

A. I don't recall. I would say it was probably within a week or so. I'm not sure of the exact date.

Q. Do you know who the people were who entered his office?

A. Yes, I do.

Q. Who were they?

A. To my knowledge they were Dr. Laskey, Jim Stratton, Mr. Arnold, and myself.

Q. Okay. Did you all enter at the same time?

A. No.

Q. Were there separate entries, then, into his office?

A. Yes.

Q. Tell us to the best of your recollection or knowledge how many entries there were and who participated in them?

A. To the best of my knowledge it would be difficult, because I didn't ask Mr. Stratton every time he entered, or

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Q. Did you use this special key to his office to enter?

A. That's correct.

Q. It was just one key, or were duplicates made?

A. No, just one key.

Q. In relation to the date that Dr. Ortega was placed on administrative leave, August 17, approximately when did you enter his office?

A. I'd say probably within five or six days, something to that effect.

Q. Was it during a regular work day?

A. No, it wasn't.

Q. In an evening?

A. It was an evening.

Q. Was anyone else present at the time?

A. No.

Q. Was anyone else present even in the entire department when you went in?

A. No.

Q. What was your purpose in going in?

A. My purpose was to make sure that the work was proceeding in terms of boxing items up, separating things, and so forth.

Q. And who was supposed to be doing that kind of work?

A. That was part of the things that Mr. Arnold and Mr. Stratton were supposed to be trying to do.

Q. Did it appear that this work was proceeding?

A. It didn't look real good, because the office itself was pretty much in—you know, there were just a lot of papers around and boxes and different things.

Q. And what did you do when you went in?

A. I looked it all over, looked in the right file drawer to see if the reports had been taken out of there. And that was about it.

Q. How long were you in there?

A. Probably about 15, 20 minutes.

Q. What reports are you talking about that were in the right file drawer?

A. Well, I was just wanting to see if there were still reports regarding residents that were involved in the training program, whether there were contracts, or other types of items that needed attention, or what was really there.

Q. What kind of items did you see in the office?

A. In the office?

Q. Yes.

A. I saw boxes and I saw records.

Q. Let me ask you first about the right file drawer. What do you recall that was in the right file drawer?

A. I recall basically there were some different notes on residents that Dr. Ortega had worked with. There was one memo or card from one of Dr. Ortega's residents that was in their.

Q. You mean a personal valentine?

A. It appeared to be a personal valentine's card in with other files.

Q. Was that the one that was from Dr. Sutter, Sutton?

A. That's right, Sutton.

Q. What else could you recall? Any other personal letters or correspondence?

A. I didn't get in—there were obviously other things in there, but I didn't proceed to that point.

Q. Were there any financial records that you remember seeing?

A. I do recall seeing some Medi-Cal, something or other regarding Medi-Cal laying someplace around there.

Q. That was a patient file?

A. I think it was.

Q. How many different patient files did you see?

A. I couldn't tell you, because I didn't look that close.

Q. Would you say more than half a dozen?

A. I would say—no, I would say.

MS. WAINWRIGHT: I want you to remember that you're not supposed to guess. If you remember, fine.

THE WITNESS: That's right. You're asking what I saw, and my best estimate, I know I saw less than a half a dozen. And the answer, you asked me: Was it more, and I said no.

MR. GRAHAM: Q. Did you make any notes of your visit there?

A. I didn't make any notes, no.

Q. You didn't do anything in writing to write down what you saw or anything?

A. No.

Q. Did anybody, so far as you know, including Mr. Stratton, Arnold and Dr. Laskay make any inventory of the things that they saw in the room?

A. I believe that Dr.—I believe that Mr. Stratton had started this, but it became so mundane, and so much, that I don't know whether he ever finished or not. I think he finally just tried to decide what was Dr. Ortega's and box it up.

Q. Do you know where his memo is at the present time?

A. No.

Q. Did you actually see the memo?

A. No.

Q. I'm using "memo" loosely here. Did you see any notes or anything from him?

A. No.

Q. What made you think that he did start a list?

A. Because he mentioned it to me.

Q. So he mentioned it to you, but you didn't actually see it?

A. No.

Q. And how about a personal appointment book? Did you see that in Dr. Ortega's office?

A. No.

Q. Did you see a long file full of IBM cards?

A. I don't recall seeing those.

Q. Regarding the patient with the Medi-Cal problem, was there a follow-up to—

MS. WAINWRIGHT: Wait a minute. Could you clarify what you mean by the patient with the Medi-Cal problem?

MR. GRAHAM: Q. Yes. You just mentioned that you saw a file in there regarding some matter regarding Medi-Cal. Was there any follow-up with that particular file by anyone?

A. Mr. Stratton may have done some minor follow-up. I'm not sure.

Q. What do you know about what he tried to do, if anything?

A. I don't.

Q. You say "he may have." What makes you think that?

A. Yes, because I mentioned to him the next day, to him and Mr. Arnold, that I had been there and figured that they should take a look at the Medi-Cal area and so forth.

Q. What did you mean exactly, or what did you say exactly? In other words, what do you mean that they should take a look at the Medi-Cal area?

A. I said there was a Medi-Cal file down there and it looked that it was something not directly related to what Dr. Ortega was doing, and it should be checked out, that's all.

Q. Did he ever report back to you what he had done with that Medi-Cal patient?

A. No, he didn't, no.

Q. Did you hear anything further of it, after that?

A. I did, but I don't recall what it really amounted to.

Q. Do you recall who you heard it from?

A. I think I heard it from the personnel officer?

Q. Dorothy Owen?

A. Dorothy Owen.

Q. Basically, she indicated that there wasn't anything that came from that investigator, that part of it?

A. I don't recall what she said.

Q. Do you recall whether she indicated that there was something further to look into, or there was not?

A. I don't recall what she said.

Q. Were any copies made by anyone of any of the materials that were in Dr. Ortega's office to the best of your knowledge?

A. To the best of my knowledge I certainly didn't make any. I don't know of anyone else making any, but that's to the best of my knowledge.

Q. But you were never informed of anyone who made any copies of anything?

A. No.

Q. Were there any restrictions placed on Mr. Stratton and Mr. Arnold and Dr. Laskay regarding who they could disclose these particular documents and information to that were found in Dr. Ortega's office?

A. It was confidential.

Q. Were they told it was confidential, or you just think they understood that?

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A. I really don't know. Again, it's been over two years. I can't recall.

Q. Can you give us an estimate in regard to the date that Dr. Ortega was placed on administrative leave?

A. Same, two months. It might have been shorter, but again, that's a guess.

Q. Who did that task?

A. I don't know. I don't recall at this point in time.

Q. Do you recall whether you told that person to do it or whether somebody else did?

A. I think I did.

Q. Do you think it was probably Mr. Stratton?

A. I would suspect it was Mr. Stratton, rather than somebody else.

Q. And what was done with the things that were taken out of Dr. Ortega's room?

A. It was boxed up. Dr. Ortega was notified to come and pick it up. It was put in one of our special locked storage areas.

Q. And where is that locked storage area?

A. Well, I'm not sure. It's in—it was in the R&T, Receiving and Treatment, it's where we used to. I'm not sure whether it's been picked up or not.

Q. How many boxes are there, do you know?

A. No, I don't.

Q. Have you ever seen them since they were boxed up?

A. No, I have not.

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Q. When did that take place?

A. Again, to the best of my recollection, it took place when Dr. O'Connor called me and informed me that Dr. Ortega was placed on administrative leave.

Q. So it was on or about the same date?

A. Yes.

Q. In other words, that happened about August 17th, assuming that's the correct day?

A. August 17th, or it could have been even a little earlier. I don't recall, but it could have been.

Q. Did you call the locksmith the same day?

A. Uh-huh.

Q. Did they come out the same day?

A. Yes.

Q. Do you have any receipt or any financial record that would indicate exactly when that took place?

A. We have a locksmith at the hospital, and generally speaking a work order is initiated. But because of my request, in instances like this, I do have the authority to do something like that without fooling around with a work order.

Q. So you didn't have to pay separately for it? You, meaning the Hospital?

A. That's right.

Q. Now, what was the reason that the locks were changed in Dr. Ortega's office so far as you know?

A. The reason primarily was one of securing a building in which there was no longer any person directly responsible for it, to make sure that all State properties were under our control, because we didn't know who had keys to what.

Q. So you had no special fears or suspicion of Dr. Ortega himself, it was just to secure the building generally?

A. To secure the building, including Dr. Ortega or anybody else.

Q. The locks were changed in his office prior to the time he was actually terminated, correct?

A. No. Oh, yes, uh-huh.

Q. And so far as you know has that ever happened before in Napa State Hospital, that they locked somebody out of their office before they were terminated from their job?

MS. WAINWRIGHT: Okay. I'd like a clarification. The locks were changed in Dr. Ortega's office. I don't think they testified that they locked somebody out of their office.

MR. GRAHAM: I will add that if you want.

Q. So far as you know, Dr. Ortega was never given a key to the new lock, was he?

A. No, he never asked for one.

Q. Would you have given him one if he asked for one?

A. No.

Q. So, in fact, he could not enter his office, right?

A. That's right.

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A. There were complaints that Dr. Ortega had removed the computer.

Q. But that didn't have anything to do with the decision on entering his room; is that right?

A. No.

Q. Or changing the locks?

A. No. The locks, that decision was already . . .

Q. Already implemented?

A. Implemented, or being implemented.

Q. Let me show you one of the memos that you produced today dated August 26, 1981. Can you just tell us basically what that memorandum is?

A. It's basically a discussion that I had with Dr. Ortega regarding the computer and the consultant contracts, and the equipment to the computer.

Q. And this was concerning the conversation that you had with Dr. Ortega in the course of your investigation?

A. No, at that time there wasn't really an investigation, as I recall.

Q. Now, this involved a meeting that happened on May 28, but the memo is dated August 26th, 1981?

A. That's correct.

Q. Can you tell us why there was such a long delay before the memo was transcribed?

A. I had made some notes, and just some of the discussions that Dr. Ortega and I had had, and that when the other areas of questions came up regarding Dr. Ortega, I put those together as part of the investigation.

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MAGNO J. ORTEGA, *Plaintiff,* vs. DENNIS M. O'CONNOR, EXECUTIVE DIRECTOR, NAPA STATE HOSPITAL, et al., *Defendants.*	No. C 82-4045 RHS

DEPOSITION OF JIM STRATTON

THURSDAY, DECEMBER 1, 1983

REPORTED BY:

BARBARA L. YEE, CSR 3296

A. Approximately 20-22, maybe more.

Q. Okay, all right. So is it acceptable to you and your counsel, then, if Dr. Ortega calls you and makes an appointment in the next week to pick them up?

A. Yes, as far as I am concerned.

Q. Are there any copies that have been made of any of these documents or articles?

A. I don't know of any documents or articles. If you are referring to his personal property?

Q. Any copies that have been made of anything.

A. Not to my knowledge.

Q. Okay. So as far as you know, there is only one set, the original of the articles of documents removed from his office?

A. Just what I removed from his offices there.

Q. Okay. Now, you didn't find any log or summary of what was taken from his office?

A. No, sir, I removed the stuff myself, and I did not make a log or summary of it.

Q. You didn't make any notes or anything?

A. No, I did not.

Q. Did you start to make notes?

A. At the beginning, I started to, then it was superfluous, and I threw everything away and boxed it all up.

Q. What do you mean it was superfluous?

A. There was so much stuff. Trying to sort State from non-State, it was too much to do, so I gave it up and boxed it up.

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Q. How long have you been employed there?

A. I was in the Army for two years, and I worked for the Department of Correction for one year, total State service is 19 months.

Q. So you have been at Napa 16 months?

A. Yes.

Q. And what is your position there?

A. Hospital Peace Officer I.

Q. How long have you had that position?

A. Since February of 1979.

Q. And who is your immediate superior?

A. John Henry, Chief of Staff Services.

Q. Is your employer, then, the State of California?

A. Yes.

Q. You are not a private corporation, I take it?

A. No.

Q. And the job title is—you want to give it to me again?

A. Hospital Peace Officer I.

Q. What are your duties as Hospital Peace Officer I?

A. I patrol the grounds, take reports, maintain security of the facility and other jobs specified by my superior.

Q. Okay. Do you ever have any duties that are given to you by any other superior except Mr. Henry?

A. Yes, Mr. Friday.

Q. Okay. And Mr. Friday is Hospital Administrator?

A. Yes, he is.

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A. I think I was in my office, which is Protective Services office.

Q. Is that in the same building as Dr. Ortega's office?

A. No, it isn't.

Q. So your best recollection is that Mr. Friday came into your office?

A. Yes, I think so.

Q. What did he say when he gave you the key?

A. I think he gave me the key and told me to sort out the State property from Dr. Ortega's personal belongings.

Q. Did he say why to do that?

A. I believe he said Dr. Ortega was on administrative leave.

Q. Did he say anything else about why you should do it? I don't quite understand. He just said Dr. Ortega is on administrative leave and said search his office?

A. He didn't tell me to search his office; he told me to go down and remove his stuff, sort it out.

Q. Besides saying Dr. Ortega is on administrative leave, did he say why you should do this?

A. I don't recall if he did or not.

Q. Did he tell you to look for anything in particular?

A. Only to separate out between State and personal property.

Q. Did he tell you how to do this, separating the personal property from State property?

A. No. That is why I didn't make any list or anything like that; it was too complicated even for my nimble mind.

Q. Did you have any idea how to do that?

A. No. I just took an overview and I thought, well, I will just box it up, so that is what I did.

Q. Was it difficult to decipher from the things you saw whether they were State or personal property?

A. That is correct.

Q. Why is that? Why was it difficult?

A. When does something become State and when is it personal? I don't know. There were reams and reams and stuff—papers. I didn't stop to read them. I just looked at the heading and if it said Professional Education, I assumed it was State.

Q. How did you assume if something was personal?

A. If it didn't say State of California or Napa State Hospital or Educational Profession.

Q. Did you go over to Dr. Ortega's office the same day you got the key from Mr. Friday?

A. As I recall, yes.

Q. Do you recall what time of day it was? Was it day or night?

A. I can't recall that.

Q. Do you know if your—if you were working days or nights then?

A. I was working daytime.

Q. And that is what, 8:00 to 5:00?

A. 8:00 to 5:00.

Q. And it was during your working shift?

A. Yes, it was.

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same day or earlier than that, that you first entered his office?

A. I can't recall. It would be within a reasonable time.

Q. By that you mean what, a day or two?

A. Possibly, yes.

Q. Do you know who changed the locks?

A. I would say it would be the locksmith.

Q. Who is the locksmith that does the work there?

A. Larry Thomason.

Q. Is that T-h-o-m-a-s-o-n?

A. I don't know how you spell his last name.

Q. And where does he work out of? Is he an employee of the State?

A. Yes.

Q. And he is based there at Napa State Hospital?

A. Yes, he is.

Q. Do you use him for other investigations in changing locks?

A. Yes, I have.

Q. Had you ever personally been involved in any other situations like this when an employee's office was entered and the locks were changed?

A. Me, personally, no.

Q. But you have heard of other occasions in which this has been done?

A. That is possible.

Q. What do you mean it is possible? Do you recall?

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